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**BUREAU OF WASTE PREVENTION  
DIVISION OF PLANNING AND EVALUATION**

**BACKGROUND DOCUMENT AND TECHNICAL SUPPORT  
FOR A PUBLIC HEARING  
ON A PROPOSED REVISION TO THE  
STATE IMPLEMENTATION PLAN FOR OZONE  
AND  
A PROPOSED REVISION TO  
310 CMR 7.28  
“NO<sub>x</sub> Allowance Trading Program”**

Regulatory Authority:  
M.G.L. c. 111, Sections 142A through 142N  
April, 2000

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

DEP on the World Wide Web: <http://www.state.ma.us/dep>



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## **LIST OF ACRONYMS**

DEP	Massachusetts Department of Environmental Protection
EPA	US Environmental Protection Agency
MEPA	Massachusetts Environmental Protection Act
MOU	Memorandum of Understanding
NO <sub>x</sub>	Nitrogen Oxides
OTC	Ozone Transport Commission
SIP	State Implementation Plan

**Background Document and Technical Support for a Proposed Revision to the  
Massachusetts State Implementation Plan for Ozone, Including a Proposed Revision to  
310 CMR 7.28 - “NO<sub>x</sub> Allowance Trading Program”**

**April, 2000**

**I. Synopsis**

*In November 1999, the Massachusetts Department of Environmental Protection (DEP) promulgated a Nitrogen Oxides (NO<sub>x</sub>) Allowance Trading Rule, 310 CMR 7.28. This rule allocates approximately 13,000 tons of NO<sub>x</sub> to power plants and other large electric generating sources in Massachusetts. Under 310 CMR 7.28, three municipal power companies are provided a fixed amount of allowances for the first three seasons of the program (2003-2005). Due to a calculation error, seven fewer NO<sub>x</sub> allowances than intended were allocated to three municipal power companies for control periods 2003-2005. DEP proposes to address this deficiency by revising section 310 CMR 7.28(6)(b)4 to allocate seven allowances per season to the municipal power companies from the Public Benefit Set-Aside for each of the first three control periods of the program (2003-2005).*

**II. Proposed Revision to 310 CMR 7.28**

**A. Summary of 7.28**

In November 1999, the DEP submitted a State Implementation Plan (SIP) revision to the US Environmental Protection Agency (EPA) in order to fulfill its obligations under EPA’s NO<sub>x</sub> SIP Call (63 FR 61712, October 10, 1997), and its commitments under the Ozone Transport Commission (OTC) NO<sub>x</sub> Memorandum of Understanding (MOU). The OTC NO<sub>x</sub> MOU was adopted in 1994, and established a two-phased program to reduce NO<sub>x</sub> emissions from large fossil fuel fired boilers and indirect heat exchangers through a regional allowance trading program. 310 CMR 7.28 implements the second phase of the OTC NO<sub>x</sub> MOU program, which begins in Summer 2003. This program sets an ozone season state cap on utility NO<sub>x</sub> emissions at 12,861 tons. Under 310 CMR 7.28, Massachusetts will allocate 12,861 allowances to affected sources on the basis of historical net electrical output, encouraging efficiency and pollution prevention in the electric generation sector. For more information on 310 CMR 7.28, see the July, 1999 *Background Document and Technical Support for Public Hearings on Proposed Revisions to the State Implementation Plan For Ozone: Response to the “NO<sub>x</sub> SIP Call” and the “OTC NO<sub>x</sub> MOU,” Including Amendments To 310 CMR 7.00 Et Seq.: 310 CMR 7.19 “RACT for Sources of Oxides of Nitrogen,” 310 CMR 7.27 “NO<sub>x</sub> Allowance Program,” and 310 CMR 7.28 “NO<sub>x</sub> Allowance Trading Program.”*

## **B. Description of Municipal Power Companies Affected by 310 CMR 7.28**

Municipal power companies in Massachusetts may construct, operate, and maintain electric generating facilities to meet the needs of their municipalities or other electricity consumers in the New England region. Municipal power companies do not have stockholders, and do not operate for profit.

Facilities owned by three municipal power companies in Massachusetts are affected sources under 310 CMR 7.28: Potter Station in Braintree, Waters River 2 in Peabody, and Cleary Station in Taunton. These sources receive a fixed allocation for the first three years of the allowance trading program. These three sources' allocations are based upon their allocations under 310 CMR 7.27, reduced by the ratio of the overall budget from 310 CMR 7.27 to 310 CMR 7.28. Beginning with control period 2006, allocations to these facilities will be determined in the same manner as all other facilities in the program, i.e., based on historical electrical and steam output, with allowances from the general NO<sub>x</sub> allowance pool.

## **C. Description of Issue and Proposed Revision to 7.28**

Under 310 CMR 7.28, DEP provided for a fixed allocation to the affected facilities of municipal power companies for the first three years of the allowance program. This involved a two-step process. In step one, the unadjusted fixed allocation was determined by multiplying each unit's allocation under 310 CMR 7.27 by the ratio of the 310 CMR 7.28 allocation budget to the 310 CMR 7.27 allocation budget. In step two, the unadjusted allocations for all units were ratcheted down so that the total of all allocations did not exceed the state allocation budget. The ratio in step one was calculated incorrectly in determining the allocations only for the three municipal facilities. As a result of this miscalculation, the three municipal power companies in Massachusetts received, in total, seven fewer NO<sub>x</sub> allowances (out of 12,861) than intended, per season. This situation only applies to each of the first three control periods of the program, i.e., 2003-2005. After control period 2005, allowances to these facilities will be allocated from the general allocation pool and will be calculated like all other facilities in the program.

To address this issue, DEP proposes a revision to 310 CMR 7.28 to provide the three municipal power companies with the additional seven allowances per season. More specifically, DEP proposes to revise 310 CMR 7.28(6)(b)4 to allow for the seven NO<sub>x</sub> allowances per season to be allocated to the municipal power companies from the Public Benefit Set-Aside for the first three control periods of the program (2003-2005). This proposed revision will reduce the Public Benefit Set-Aside from 643 allowances to 636 allowances for the first three control periods of the program. This proposed revision does not affect any other facilities' allowances, and does not affect the general allocation pool. Please see Attachment A for the proposed revision to 310 CMR 7.28.

*DEP seeks comment on its proposal to revise 310 CMR 7.28(6)(b)4 to allow seven allowances per season to be allocated from the Public Benefit Set-Aside to the affected municipal power companies for the first three control periods of the program (2003-2005). DEP is not opening any other section of 310 CMR 7.28 for revision.*

### **III. Agricultural Impacts**

Pursuant to the intent of Massachusetts General Laws, Chapter 30A, Section 18, state agencies must evaluate the impact of proposed programs on agriculture within the Commonwealth.

The proposed revision to the NO<sub>x</sub> Allowance Trading Program is not expected to have any significant impact on agricultural activities in Massachusetts.

### **IV. Impact on Massachusetts Municipalities, Proposition 2½**

The proposed revision to 310 CMR 7.28 affects three Massachusetts municipal power companies located in Braintree, Peabody, and Taunton. Under the proposal, these three units will receive the allowances that were intended to be allocated to them under 310 CMR 7.28 during the 2003-2005 seasons. The proposal has no substantial effect on the municipalities.

### **V. Massachusetts Environmental Protection Act (MEPA)**

This proposed action is "categorically exempt" from the "Regulations Governing the Preparation of Environmental Impact Reports," 301 CMR 11.00, because the proposed revision to 310 CMR 7.28 do not meet or exceed one or more MEPA review thresholds.

### **VI. Impacts on Other Programs**

Since the proposal is a minor revision in response to a calculation error, there is no significant impact of this proposed revision on other programs such as Toxics Use Reduction or Air Toxics.

### **VII. Public Participation**

The proposed revision to 310 CMR 7.28 is subject to public review and comment prior to finalization and promulgation. After public review, and DEP evaluation of and response to any comments, the final revision will be submitted to the Secretary of the Commonwealth for promulgation. The final revision will be submitted to the US EPA as a revision to the Massachusetts SIP for ozone.

As required by state law, DEP gives notice and provides the public the opportunity to review background and technical information at least 21 days prior to proposing SIP revisions at a public hearing. To assure more adequate notice for processing a revision to the SIP and to comply with EPA notice requirements, a formal notice is issued 30 days before a public hearing. A public hearing to collect comments on the proposed SIP revision, including the proposed revision to the NO<sub>x</sub> Allowance Trading Program, 310 CMR 7.28, will be conducted under the provisions of M.G.L. Chapter 30A on:

Thursday, June 1<sup>st</sup>, 2000  
10:00 AM  
DEP - Boston Office  
9<sup>th</sup> Floor Conference Room  
One Winter Street  
Boston, MA

Testimony may be presented orally or in writing at the public hearings. Written comments will be accepted until 5:00 p.m. on Thursday, June 1<sup>st</sup>, 2000. Please submit comments to:

Paul J. Hibbard  
Department of Environmental Protection  
BWP/Division of Planning & Evaluation  
One Winter Street, 8<sup>th</sup> Floor  
Boston MA 02108  
Attention: 7.28 Revision

To ensure that your written comments are included in the hearing docket, please make sure that you address your comments to Paul J. Hibbard on the 8<sup>th</sup> Floor. Comments sent to other offices may not be received in time to be included in the official docket.

If there are any questions regarding this document, please contact Paul J. Hibbard (617-574-6801) or Jen D'Urso (617-348-4015) at DEP's Bureau of Waste Prevention, Division of Planning & Evaluation.

# ATTACHMENT A



Amend section 310 CMR 7.28(6)(b)4 to read:

4.a. For each of the three control periods of 2003 through 2005 only, the budget units in Table A will receive the allocations listed in the table from the public benefit set-aside.

310 CMR 7.28(6)(b)4.a. TABLE A Partial NOx Allowance Allocation from the Public Benefit Set-Aside for 2003 - 2005		
NAME	ORIS Code	Allowance Allocation
Braintree	01660	3
Peabody	01658	1
Taunton	01682	3

b. (reserved)